Award No. 8381
Docket No. CL-8193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, Referee

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(a) That the Carrier violated and continues to violate the terms of Clerks' Agreement No. 7 when beginning May 16, 1948, it removed work belonging to clerical employes covered by said Agreement in connection with refrigeration, ventilation and related services at Ninth Street Freight Station and Bulk Yard, Richmond, Virginia, theretofore performed by Clerk Grover L. Dyer, and thereafter required employes of the Mechanical Department covered by another agreement to perform said work, and

(b) That the Carrier shall compensate an employe or employes to be nominated by the Organization to receive same in the amount of pay for 8 pro rata hours for May 16, 1948, and for each subsequent date that violation complained of is continued. This claim to continue until full correction is made.

EMPLOYES' STATEMENT OF FACTS: Mr. Grover Lee Dyer is an employe of the Carrier at Richmond, Virginia, with seniority date of October 19, 1903. Mr. Dyer was the occupant of a position classified as in Group 3 of Rule 1 of the effective Agreement. In 1939 a question arose as to proper classification of the position and it was agreed the position should be classified as Group 1, Clerk. The rate of pay was increased and the agreement was that since Mr. Dyer had occupied the position about 30 years, and had no Group 1 seniority, he should continue to occupy the position, but that when vacated, it should be bulletined as a Group 1 position. A copy of the Agreement in regard to Mr. Dyer and his position is attached hereto and identified as Employes' Exhibit "A."

Mr. Dyer had as part of his duties for more than 35 years he occupied the position the work of inspecting refrigerator cars for ice in bunkers, ordering ice when necessary, and adjusting plugs as required. Mr. Dyer inspected ventilator cars to see that vents were arranged according to instructions, making any necessary adjustments.

A principle (or set of circumstances) which produces a sustaining award in one case may well bring forth a negative award in a different case with entirely different facts.

Refrigerator inspection work is in focus in the instant case, and as has repeatedly been said, it is not believed that anyone will rise up to say that such work is **exclusive to clerks**; for if such work belongs exclusively to clerks, would they not be entitled to such work at numerous points over the railroad where carmen for decades have done all of such work?

Thus, the Carrier wishes it understood that it does not cite Awards 5489, 5658, 5730, and 5777 in support of its position, but still contends, as it has throughout this Response, that this case must be settled on its **own merits**, under all of the rules of General Agreement No. 7 as they were negotiated by the parties in full good faith to become effective January 1, 1945.

7. **Rule 1 (b) construed as contended would deprive Management of its right and obligation to maintain forces in keeping with work and service conditions.**

It will be seen that if the contention in this case were upheld, the Carrier would be required to continue the Clerk position with less than a day's work. Obviously, nothing in the agreement for Clerks contemplates this, and such right and prerogative should not be taken from Management.

On the other hand, the Carrier has maintained an adequate force at Ninth Street and at Broad Street (Richmond) to give the proper service. The car inspector does the refrigerator inspection work along with his other duties on the same cars without difficulty.

It will be seen that the claim in the instant case is a continuing one, the Employes taking the position that none but clerks can do the refrigerator inspection work at Ninth Street, Richmond.

CONCLUSIONS

The Carrier has shown by abundant evidence that the Employes themselves have taken the position that the work in question is not covered by the Clerks' scope rule. The evidence is equally conclusive that neither Rule 1 (b) nor any other rule of the general agreement has been violated in assignment of the refrigerator inspection work at Ninth Street, Richmond.

The claim should be denied in its entirety.

All data contained in this submission have been discussed in conference or by correspondence with the Employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Grover Lee Dyer was employed in the Carrier's Ninth Street Station and Bulk Yard in Richmond, Virginia. He was at one time classified in Group 3 and later reclassified by agreement into Group 1 under the Classifications set out in the agreement between the Clerks and the Carrier. He had as a part of his duties for the more than 35 years he occupied his position the work of inspecting refrigerator cars for ice in bunkers, ordering ice when necessary, and adjusting plugs as required. He also inspected ventilator cars to see that vents were arranged according to instructions, making any necessary adjustments.

On May 16, 1948, the Carrier removed the work described above from his position and assigned it to Car Inspectors, members of another craft. It is complained that the Carrier took such action without notice to the employes in accordance to rules 1(b) and 65. Original reports were that the work was removed only on Saturday and Sunday but later it developed that the work was removed in its entirety.

Agreement Number 7, effective January 1, 1945 was the current agreement between the parties. That agreement contained the following:

"RULE 1 — SCOPE

"(a) These rules shall govern the hours of service and working conditions of all of the following class of employes:

"Group 1—Clerical Workers: Employes who regularly devote not less than 4 hours per day to the compiling, writing, and/or calculating incident to keeping records and accounts, transcribing and writing letters, rendition of bills, reports, statements, handling of correspondence, checking baggage, freight and material, and similar work, and to the operation of office or station mechanical equipment requiring special skill and training such as typewriters, calculating machines, adding machines, bookkeeping machines, tabulating machines, accounting and timekeeping machines, statistical machines, dictaphones, key punch, recordak, and photostat machines, teletype (except teletypes used exclusively in the transmission of messages and reports and located in offices which are equipped with telegraph facilities), and other similar equipment or devices used in the performance of clerical work or in lieu thereof. Also station, store and warehouse general foremen and assistant general foremen; station, store, warehouse and merchandise pier foremen and assistant foremen; at Newport News, Virginia, top and bottom coal pier foremen and assistants, and sprinkler foremen; pursers and assistant pursers, chief clerks, assistant chief clerks, ticket sellers, managers of Zone Revision Bureaus, division storekeepers, stationery storekeeper, car distributors, traveling timekeeping accountants, assistant boatmasters, city ticket agents and assistants.

"(b) Positions within the scope of this Agreement belong to employes herein covered and nothing in this Agreement shall be construed to permit the removal of such positions from the application of these rules except as provided in Rule 65.

* * * * *

"(d) When classification of position does not conform to this rule, proper classification will be made."

"RULE 65 — DATE EFFECTIVE AND CHANGES

"This Agreement shall be effective as of January 1, 1945, and shall continue in effect until it is changed as provided herein or under the provisions of the Railway Labor Act as amended.

"Should either party to this Agreement desire to revise or modify these rules, thirty (30) days' written advance notice, containing the proposed changes, shall be given and conference shall be held immediately on the expiration of said notice unless another date is mutually agreed upon."

The work in question was directly set forth in the agreement with the Carmen—"Classification of Work Rule" Rule 45(a): "Carmen's work shall consist of * * inspecting all passenger and freight cars * *." It was pointed out by the organization that the work in question is really not the usual inspection of passenger and freight cars. It is admitted, however, that Carmen did perform this work in other yards to the exclusion of the Clerks. Letters were presented as exhibits by the Carrier in which District and Local Chairman of the Clerks requested that this particular work be removed from the Clerks as it is not contained within the Scope Rule of the Clerks' Agreement.

Carrier's Exhibit 1, a letter written on June 20, 1947 by the Division Chairman, in Richmond, Virginia at that time reads in part:

"However, upon examination of our Agreement No. 7, scope Rule 1, and various files covering this subject, we find that where the Mechanical Department has a Car Inspector conveniently located such work is considered to be their work. We have consistently maintained that to require Clerks to perform such work would violate our agreement. We note that Rule 1, (the Scope Rule) does not mention 'Inspection of Cars' as being a part of duties of Clerical workers.

"It is understood that where no 'Car Inspectors' are conveniently located the Clerks do inspect cars for icing and examine such cars regularly in accordance with the requirements of the carrier. In this particular case however there is a Car Inspector located at Broad Street Freight Station and he is equipped with the necessary tools to perform the work in question, while the Clerks are not.

"It is our request that the work of inspecting Refrigerator Cars, when it is necessary to remove 'Plugs', open Bunker doors, and measure ice, be confined to the Mechanical Department."

A previous letter on another division dated February 16, 1945 conveyed the same information regarding adjusting ventilator plugs in Peru, Indiana.

On May 16, 1948 this work was removed from the work of Grover L. Dyer and on September 6, 1948 the same Division Chairman who wrote the letter of June 20, 1947, wrote a letter complaining about the removal of this work. Part of that letter reads:

"The above work is a part of Dyers regular assignment and has been as stated above for the past 35 years. Other duties assigned to this position are, making a complete check of all cars placed in this district, recording car numbers, taking seal records, sealing cars, and all 'outside' work incidental to the preparation of car service and Demurrage reports.

"It is the Claim of the Division Protective that Grover L. Dyer shall be allowed proper compensation in line with the provisions of General Agreement No. 7, for all Sundays and Holidays since May

16, 1948, and that he be called to perform all such work on Sundays and Holidays, and that such work be returned to employes covered by the Clerks Agreement.

"Such work is historically work covered by the clerks agreement and is so handled pretty generally throughout the country. We certainly cannot agree to any work that has been performed by employes covered by our agreement being turned over to employes covered by other agreement."

On January 30, 1949 another letter written by this same Divisional Chairman read in part "This work, of checking refrigerator cars in the Ninth Street area, Richmond, Va. belongs to the position now occupied by Dyer and when it was taken from him and given to others not covered by our agreement definitely violated the scope rule of seniority, and rules governing rates of pay."

The Scope Rule 1 (b) provides "positions within the scope of this agreement belong to employes herein covered and nothing in this agreement shall be construed to permit the removal of such positions from the application of these rules except as provided in Rule 65." (Underscoring added) Here no position was removed but certain work performed by the employe was transferred to other employes not covered by the agreement. The work transferred is not listed in the Scope Rule of the agreement as being a part of the work of Clerks and the only way that it can become a part of the work of the Clerk herein is the fact that it was being performed by the Clerk at the time of the agreement and had been his work for many years prior.

We can agree with the conclusion of the organization when they state "since there was no abolishment of a position here, we want to refute with all the emphasis at our command, the illogical implied contention of the carrier, that it can take work **(which is the essence of a position)** out from under the scope of the agreement and give it to those not covered thereby to perform. If that were possible, then the carrier could, bit by bit, circumvent the provisions of scope Rule 1, particularly the special provision thereof. That which we said in Award 198 applies with equal force here, reading in part: 'Certainly the carrier must not be permitted to do piecemeal what it has agreed not to do wholesale.' "

We cannot agree, however, that the work removed was actually "the essence of the position" herein. The work was not listed as that of clerks, the Divisional Chairman in at least two areas had requested that the particular work be assigned to some other employes as not being within the Scope Rule, and the work had admittedly been performed by others in other locations for the carrier even though clerks were also employed at those locations. We quote the Board in Award 5790 when it was said—

"The word positions, when used in connection with an agreement, has been defined by this division as ' "positions" which are subject to the agreement are protected to the craft by the agreement, and since "work" is of the essence of a position such work which is the manifestation of the position and the identity of it is likewise protected to the craft.' Award 1314 of this Division."

We hold that the work herein was not a "manifestation" of the position of clerk. We further hold that the work in question has not been traditionally and customarily performed by clerks and particularly not to the exclusion of other employes.

The work in question was not assigned to Clerks by specific reference in the agreement; it is not Clerks' work to the exclusion of other classes or crafts, and no position was abolished hereby. This ruling was summed up by this Division in Award 7031 (Carter) where it was held:

> "* * * Where work may properly be assigned to two or more crafts, an assignment to one does not have the effect of making it the exclusive work of that craft in the absence of a plain language indicating such an intent. Nor is the fact that work at one point is assigned to one craft for a long period of time of controlling importance when it appears that such work was assigned to different crafts at different points within the scope of the agreement. We conclude that the work here in question was not the exclusive work of Clerks on this Carrier. * * *"

The question of notice to others which was raised by the Carrier will not be discussed herein.

A denial award is therefore indicated.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.